THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

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Baldev Singh. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 6089/2005

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Date of Order: April 16, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. G.R. Goyal, for the petitioner.
Mr. Rameshwar Dave, Deputy Govt. Advocate.
Mr. B.S. Sandhu, for respondent No.3.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction for expunging the adverse remarks communicated to him by the respondent No.1 vide letter dated 4-1-2005 (Annx.1).

The facts of the case, in a nut-shell, are that the petitioner was working as the Patwari under the respondent No.2. Respondent No.3, who was the reviewing authority, recorded an adverse entry in the Annual Performance Appraisal Report (for short, "the "APAR" hereinafter) of the petitioner for the year 2003-04 to the effect that being the Patwari, he made a wrong record on the application of an applicant for issuing domicile certificate and the said adverse entry was

communicated to him. Petitioner submitted his representation against that adverse entry denying the allegation of making a false report on the application for issuing domicile certificate and came with the case that the said report was made by one Sushil Kumar Patwari. The respondent No.1, vide order dated 22.6.2005 (Annx.3), communicated to the petitioner that on his representation, comments were sought from the respondent No.2 and the respondent No.3 reported that the petitioner had made a wrong report regarding domicile certificate, for which a notice was issued and oral warning was given to him and the adverse report made in the APAR is kept intact. Hence this writ petition.

Respondents have filed their separate reply denying the averments made in the writ petition.

Learned counsel for the petitioner submits that the petitioner has stressed in the reply that at the relevant time, he was not posted at Sadhuwali and the wrong report was made by one Sushil Kumar Patwari. His further contention is that despite applying for a certified copy of the alleged notice, the copy thereof was not supplied to him, rather there is a report to the effect that such a notice is not on the record.

I have heard learned counsel for the parties and perused the record.

The petitioner came with the specific case that he did

not make any wrong report on the application for issuing bonafide certificate and the averments regarding wrong report pertains to the then Patwari of Sadhuwali area where, at the relevant time, one Sushil Kumar was posted. He has also come with the case that neither any notice, nor any oral warning was given to him. The case of the respondents is that a show cause notice was given to him and on being applied for supply of copy of such show cause notice, there is a report of the Officer-in-charge of the Record Section that no such show cause notice is on record. However, the respondents did not consider all these facts in right perspective and and declined to expunge the adverse remarks despite the fact that the petitioner has come with a specific allegation of harbouring ill-will against him by the respondent No.3 and the stand taken by the respondent No.3 regarding issuing show cause notice is not supported for want of such notice on record, as per the report of the Officer-in-charge of the record section.

Thus, the very foundation, on the basis of which the adverse APR has been recorded, loses the ground for the reason that no such show cause notice had ever been served to the petitioner. The respondents failed to establish that it was the petitioner, who at the relevant time, was posted as Patwari of village Sadhuwali. There is absolutely no material on record to show that it was the petitioner who made a false report on the

application for bonafide certificate. Even the basis, on which the adverse APR has been recorded, is not on record, meaning thereby that no show cause notice exists on record. In such a situation, the adverse APR cannot be sustained.

Consequently, the writ petition is allowed and the communication Annx.1 dated 4-1-2005 is set aside. There shall be no order as to costs.

(H.R. PANWAR), J.

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